

**2003 No. 3144**

**TELECOMMUNICATIONS  
TELEGRAPHS**

**The Radio Equipment and Telecommunications Terminal  
Equipment (Amendment No. 2) Regulations 2003**

<i>Made</i> - - - -	<i>3rd December 2003</i>
<i>Laid before Parliament</i>	<i>5th December 2003</i>
<i>Coming into force</i>	<i>29th December 2003</i>

The Secretary of State, being a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to measures relating to the approval of telecommunications terminal equipment and in relation to measures relating to wireless telegraphy including radio equipment, in exercise of the powers conferred on her by that section, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Radio Equipment and Telecommunications Terminal Equipment (Amendment No. 2) Regulations 2003 and shall come into force on 29th December 2003.

**Amendment to the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 as amended**

2.—(1) The Radio Equipment and Telecommunications Terminal Equipment Regulations 2000<sup>(c)</sup> as amended<sup>(d)</sup> (“the Principal Regulations”) shall be further amended in accordance with this regulation.

(2) References in the Principal Regulations to “the Director” shall be treated as references to OFCOM save only that the second reference in regulation 13(7) to the Director is not so treated.

(3) In regulation 2 paragraph (1):—

after the definition of “medical device” there shall be inserted the following definition:

“ ‘OFCOM’ means the Office of Communications established under the Office of Communications Act 2002<sup>(e)</sup>”.

(4) In regulation 12:

(a) in the heading and in sub-paragraph (1)(a) for the words “Secretary of State” there shall be substituted the word “OFCOM”; and

(b) in paragraph (1) for the words “Secretary of State at the Radiocommunications Agency” there shall be substituted the word “OFCOM”.

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(a) S.I. 1989/1327 and 1999/2788.  
(b) 1972 c.68.  
(c) S.I. 2000/730.  
(d) S.I. 2003/1903.  
(e) 2002 c.11.

- (5) For Regulation 13(6) there shall be substituted the following:
- “13.—(6)** If, following any representation made to it OFCOM concludes that any interface specification contains insufficient information for the purpose of paragraph (5), OFCOM may direct the public telecommunications network operator to
- (a) amend the interface specification in order to remedy the defect; and
- (b) publish the amended interface specification in accordance with the provisions of paragraph (5).”.
- (6) In regulation 18:
- (a) in paragraph (3) for the words “section 29 of the Consumer Protection Act 1987 as it is applied by Schedule 9” there shall be substituted the words “paragraph 8 of Schedule 9”; and
- (b) in paragraph (5) after the words “sections 94–97” there shall be inserted the words “and section 98(1)–(3)”.
- (7) After regulation 18 there shall be inserted the following regulation:—
- “Duty of enforcement authority to inform Secretary of State of action taken**
- 18A.** An enforcement authority shall, where action has been taken by it to prohibit or restrict the supply or taking into service (whether under these Regulations or otherwise) of any relevant apparatus, forthwith inform the Secretary of State of the action taken, and the reasons for it, with a view to this information being passed by her to the Commission.”.
- (8) In regulation 21(1) after the words “regulation 19” there shall be inserted the words “or paragraph 11(1) of Schedule 9”.
- (9) In regulation 22(1) after the words “regulation 19” there shall be inserted the words “or paragraph 11(1) of Schedule 9”.
- (10) For Schedule 9 there shall be substituted the following Schedule:—

“SCHEDULE 9

Regulation 18

ENFORCEMENT

PART I

**Enforcement authorities**

**1.** It shall be the duty of the following authorities to enforce these Regulations:

(1) in Great Britain:

- (a) OFCOM, insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
- (b) a local weights and measures authority within their area; and

(2) in Northern Ireland:

- (a) OFCOM, insofar as action taken to enforce a regulation relates to the protection and management of the radio spectrum; and
- (b) the district councils within their area.

**2.** The Secretary of State may enforce these Regulations.

**3.** In this Schedule—

“Local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985<sup>(a)</sup>.

**4.** Nothing in these Regulations shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

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<sup>(a)</sup> 1985 c.72.

## PART II

### Enforcement in Great Britain

#### 5. Suspension notices

(1) Where an enforcement authority has reasonable grounds for suspecting that any regulation has been contravened in relation to any apparatus, the authority may serve a notice (“a suspension notice”) prohibiting the person on whom it is served, for such period ending not more than six months after the date of the notice as is specified therein, from doing any of the following things without the consent of the authority, that is to say, supplying the apparatus, offering to supply it, agreeing to supply it or exposing it for supply.

(2) A suspension notice served by an enforcement authority in respect of any apparatus shall—

- (a) describe the apparatus in a manner sufficient to identify it;
- (b) set out the grounds on which the authority suspects that a regulation has been contravened in relation to the apparatus; and
- (c) state that, and the manner in which, the person on whom the notice is served may appeal against the notice under paragraph 6 below.

(3) A suspension notice served by an enforcement authority for the purpose of prohibiting a person for any period from doing the things mentioned in sub-paragraph (1) above in relation to any apparatus may also require that person to keep the authority informed of the whereabouts throughout that period of any of the apparatus in which he has an interest.

(4) Where a suspension notice has been served on any person in respect of any apparatus, no further such notice shall be served on that person in respect of the same apparatus unless—

- (a) proceedings against that person for an offence in respect of a contravention in relation to the apparatus of a regulation (not being an offence under this sub-paragraph); or
- (b) proceedings for the forfeiture of the apparatus under paragraph 21 or 22 below, are pending at the end of the period specified in the first-mentioned notice.

(5) A consent given by an enforcement authority for the purposes of sub-paragraph (1) above may impose such conditions on the doing of anything for which the consent is required as the authority considers appropriate.

(6) Any person who contravenes a suspension notice shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.

(7) Where an enforcement authority serves a suspension notice in respect of any apparatus, the authority shall be liable to pay compensation to any person having an interest in the apparatus in respect of any loss or damage caused by reason of the service of the notice if—

- (a) there has been no contravention in relation to the apparatus of any regulation; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(8) Any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

#### 6. Appeals against suspension notices

(1) Any person having an interest in any apparatus in respect of which a suspension notice is for the time being in force may apply for an order setting aside the notice.

(2) An application under this paragraph may be made—

- (a) to any magistrates’ court in which proceedings have been brought in England and Wales or Northern Ireland—
  - (i) for an offence in respect of a contravention in relation to the apparatus of any regulation; or
  - (ii) for the forfeiture of the apparatus under paragraph 21 below;

(b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or

(c) in Scotland, by summary application to the sheriff.

(3) On an application under this paragraph to a magistrates' court in England and Wales or Northern Ireland the court shall make an order setting aside the suspension notice only if the court is satisfied that there has been no contravention in relation to the apparatus of any regulation.

(4) On an application under this paragraph to the sheriff he shall make an order setting aside the suspension notice only if he is satisfied that at the date of making the order—

(a) proceedings for an offence in respect of a contravention in relation to the apparatus of any regulation; or

(b) proceedings for the forfeiture of the apparatus under paragraph 22 below, have not been brought or, having been brought, have been concluded.

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

(a) in England and Wales, to the Crown Court;

(b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980<sup>(a)</sup> or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>(b)</sup> (statement of case)).

#### 7. Test purchases

(1) An enforcement authority shall have power, for the purpose of ascertaining whether any regulation has been contravened in relation to any apparatus to make, or to authorise an officer of the authority to make, any purchase of any apparatus.

(2) Where—

(a) any apparatus purchased under this paragraph by or on behalf of an enforcement authority is submitted to a test; and

(b) the test leads to—

(i) the bringing of proceedings for an offence in respect of a contravention in relation to the apparatus of any regulation or for the forfeiture of the apparatus under paragraph 21 or 22 below; or

(ii) the serving of a suspension notice in respect of any apparatus; and

(c) the authority is requested to do so and it is practicable for the authority to comply with the request,

the authority shall allow the person from whom the apparatus was purchased or any person who is a party to the proceedings or has an interest in any apparatus to which the notice relates to have the apparatus tested.

#### 8. Powers of search etc

(1) Subject to the following provisions of this Part, a duly authorised officer of an enforcement authority may at any reasonable hour and on production, if required, of his credentials exercise any of the powers conferred by the following provisions of this paragraph.

(2) The officer may, for the purposes of ascertaining whether there has been any contravention of any regulation, inspect any apparatus and enter any premises other than premises occupied only as a person's residence.

(3) The officer may, for the purpose of ascertaining whether there has been any contravention of any regulation, examine any procedure (including any arrangements for carrying out a test) connected with the production of any apparatus.

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(a) 1980 c.43.

(b) S.I. 1981/1675 (N.I. 26).

- (4) If the officer has reasonable grounds for suspecting that there has been a contravention in relation to any apparatus of any regulation, he may—
- (a) for the purpose of ascertaining whether there has been any such contravention, require any person carrying on a business, or employed in connection with a business, to produce any documents or information relating to the business;
  - (b) for the purpose of ascertaining (by testing or otherwise) whether there has been any such contravention, seize and detain the apparatus;
  - (c) take copies of, or any entry in, any records produced by virtue of sub-paragraph (a) above.
- (5) The officer may seize and detain—
- (a) any apparatus or records which he has reasonable grounds for believing may be required as evidence in proceedings for an offence in respect of a contravention of any regulation;
  - (b) any apparatus which he has reasonable grounds for suspecting may be liable to be forfeited under paragraph 21 or 22 below.
- (6) If and to the extent that it is reasonably necessary to do so to prevent a contravention of any regulation, the officer may, for the purpose of exercising his power under sub-paragraph (4) or (5) above to seize any apparatus or documents or information—
- (a) require any person having authority to do so to open any container; and
  - (b) himself open or break open any such container where a requirement made under sub-paragraph (a) above in relation to the container has not been complied with.

#### 9. Provisions supplemental to paragraph 8

- (1) An officer seizing any apparatus or records under paragraph 8 above shall inform the following persons that the apparatus or documents or information have been so seized, that is to say—
- (a) the person from whom they are seized; and
  - (b) in the case of imported apparatus seized on any premises under the control of the Commissioners of Customs and Excise, the importer of the apparatus (within the meaning of the Customs and Excise Management Act 1979)(a).
- (2) If a justice of the peace—
- (a) is satisfied by any written information on oath that there are reasonable grounds for believing either—
    - (i) that any apparatus or documents or information which any officer has power to inspect under paragraph 8 above are on any premises and that their inspection is likely to disclose evidence that there has been a contravention of any regulation; or
    - (ii) that such a contravention has taken place, is taking place or is about to take place on any premises; and
  - (b) is also satisfied by any such information either—
    - (i) that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this sub-paragraph has been given to the occupier; or
    - (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

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(a) 1979 c.2.

the justice may by warrant under his hand, which shall continue in force for a period of one month, authorise any officer of an enforcement authority to enter the premises, if need be by force.

(3) An officer entering any premises by virtue of paragraph 8 above or a warrant under sub-paragraph (2) above may take with him such other persons and such equipment as may appear to him necessary.

(4) On leaving any premises which a person is authorised to enter by a warrant under sub-paragraph (2) above, that person shall, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as he found them.

(5) If any person who is not an officer of an enforcement authority purports to act as such under paragraph 8 or this paragraph he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Where any apparatus seized by an officer under paragraph 8 above is submitted to a test, the officer shall inform the persons mentioned in sub-paragraph (1) above of the result of the test and, if—

(a) proceedings are brought for an offence in respect of a contravention in relation to the apparatus of any regulation or for the forfeiture of the apparatus under paragraph 21 or 22, or a suspension notice is served in respect of any apparatus; and

(b) the officer is requested to do so and it is practicable to comply with the request,

the officer shall allow any person who is a party to the proceedings or, as the case may be, has an interest in the apparatus to which the notice relates to have the apparatus tested.

(7) In the application of this paragraph to Scotland, the reference in sub-paragraph (2) above to a justice of the peace shall include a reference to a sheriff and the references to written information on oath shall be construed as references to evidence on oath.

(8) In the application of this paragraph to Northern Ireland, the references in sub-paragraph (2) above to any information on oath shall be construed as references to any complaint on oath.

#### **10. Power of customs officer to detain apparatus**

(1) A customs officer may, for the purpose of facilitating the exercise by an enforcement authority or officer of such an authority of any functions conferred on the authority or officer by or under this Schedule in its application for the purposes of these Regulations, seize any imported apparatus and detain it for not more than two working days.

(2) Anything seized and detained under this paragraph shall be dealt with during the period of its detention in such manner as the Commissioners of Customs and Excise may direct.

(3) In sub-paragraph (1) above the reference to two working days is a reference to a period of forty-eight hours calculated from the time when the apparatus in question is seized but disregarding so much of any period as falls on a Saturday or Sunday or on Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(a)</sup> in the part of the United Kingdom where the apparatus is seized.

(4) In this paragraph and paragraph 11 below “customs officer” means any officer within the meaning of the Customs and Excise Management Act 1979.

#### **11. Obstruction of authorised officer**

(1) Subject to regulations 21 and 22 any person who—

(a) intentionally obstructs any officer of an enforcement authority who is acting in pursuance of any provision of this Part or any customs officer who is so acting; or

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<sup>(a)</sup> 1971 c.80.

- (b) intentionally fails to comply with any requirement made of him by any officer of an enforcement authority under any provision of this Part of this Schedule; or
- (c) without reasonable cause fails to give any officer of an enforcement authority who is so acting any other assistance or information which the officer may reasonably require of him for the purposes of the exercise of the officer's functions under any provision of this Part of this Schedule,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall be guilty of an offence if, in giving any information which is required of him by virtue of sub-paragraph (1)(c) above—

- (a) he makes any statement which he knows is false in a material particular; or
- (b) he recklessly makes a statement which is false in a material particular.

(3) A person guilty of an offence under sub-paragraph (2) above shall be liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

## 12. Appeals against detention of apparatus

(1) Any person having an interest in any apparatus which is for the time being detained under any provision of this Part of this Schedule by an enforcement authority or by an officer of such an authority may apply for an order requiring the apparatus to be released to him or to another person.

(2) An application under this paragraph may be made—

- (a) to any magistrates' court in which proceedings have been brought in England and Wales or Northern Ireland—
  - (i) for an offence in respect of a contravention in relation to the apparatus of any regulation; or
  - (ii) for the forfeiture of the apparatus under paragraph 21;
- (b) where no such proceedings have been so brought, by way of complaint to a magistrates' court; or
- (c) in Scotland, by summary application to the sheriff.

(3) On an application under this paragraph to a magistrates' court or to the sheriff, an order requiring apparatus to be released shall be made only if the court or sheriff is satisfied—

- (a) that proceedings—
  - (i) for an offence in respect of a contravention in relation to the apparatus of any regulation; or
  - (ii) for the forfeiture of the apparatus under paragraph 21 or 22,
 have not been brought or, having been brought, have been concluded without the apparatus being forfeited; and
- (b) where no such proceedings have been brought, that more than six months have elapsed since the apparatus was seized.

(4) Any person aggrieved by an order made under this paragraph by a magistrates' court in England and Wales or Northern Ireland, or by a decision of such a court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court;
- (b) in Northern Ireland, to the county court;

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 111 of the Magistrates' Courts Act 1980 or Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

### **13. Compensation for seizure and detention**

(1) Where an officer of an enforcement authority exercises any power under paragraph 8 above to seize and detain apparatus, the enforcement authority shall be liable to pay compensation to any person having an interest in the apparatus in respect of any loss or damage caused by reason of the exercise of the power if—

- (a) there has been no contravention in relation to the apparatus of any regulation; and
- (b) the exercise of the power is not attributable to any neglect or default by that person.

(2) Any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by arbitration or, in Scotland, by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **14. Recovery of expenses of enforcement**

(1) This paragraph shall apply where a court—

- (a) convicts a person of an offence in respect of a contravention in relation to any apparatus of any regulation; or
- (b) makes an order under paragraph 21 or 22 for the forfeiture of any apparatus.

(2) The court may (in addition to any other order it may make as to costs or expenses) order the person convicted or, as the case may be, any person having an interest in the apparatus to reimburse an enforcement authority for any expenditure which has been or may be incurred by that authority—

- (a) in connection with any seizure or detention of the apparatus by or on behalf of the authority; or
- (b) in connection with any compliance by the authority with directions given by the court for the purposes of any order for the forfeiture of the apparatus.

### **15. Power of Commissioners of Customs and Excise to disclose information**

(1) If they think it appropriate to do so for the purpose of facilitating the exercise by any person to whom sub-paragraph (2) below applies of any functions conferred on that person by or under these Regulations, the Commissioners of Customs and Excise may authorise the disclosure to that person of any information obtained for the purposes of the exercise by the Commissioners of their functions in relation to imported apparatus.

(2) This sub-paragraph applies to an enforcement authority and to any officer of an enforcement authority.

(3) A disclosure of information made to any person under sub-paragraph (1) above shall be made in such manner as may be directed by the Commissioners of Customs and Excise and may be made through such persons acting on behalf of that person as may be so directed.

(4) Information may be disclosed to a person under sub-paragraph (1) above whether or not the disclosure of the information has been requested by or on behalf of that person.

### **16. Service of documents etc**

(1) Any document required or authorised by virtue of this Schedule to be served on a person may be so served—

- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
- (b) if a person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
- (c) if the person is a partnership, by serving it in accordance with that paragraph on a partner or on a person having control or management of the partnership business.

(2) For the purposes of sub-paragraph (1) above, and for the purposes of section 7 of the Interpretation Act 1978(a) (which relates to the service of documents by post) in its application to that sub-paragraph, the proper address of any person on whom a document is to be served by virtue of this Schedule shall be his last known address except that—

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(a) 1978 c.30.

- (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body corporate;
- (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the principal office of the partnership;

and for the purposes of this sub-paragraph the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

#### **17. Savings for certain privileges**

(1) Nothing in this Schedule shall be taken as requiring any person to produce any records if he would be entitled to refuse to produce those records in any proceedings in any court on the grounds that they are the subject of legal professional privilege or, in Scotland, that they contain a confidential communication made by or to an advocate or solicitor in that capacity, or as authorising any person to take possession of any records which are in the possession of a person who would be so entitled.

(2) Nothing in this Schedule shall be construed as requiring a person to answer any question or give any information if to do so would incriminate that person or that person's spouse.

#### **18. Commencement of proceedings**

In England and Wales, a magistrates' court may try an information in respect of an offence committed under these Regulations if the information is laid within twelve months from the time when the offence is committed, and in Scotland summary proceedings for such an offence may be begun at any time within twelve months from the time when the offence is committed.

### **Enforcement in Northern Ireland**

**19.** The provisions of paragraphs 5 to 17 shall have effect.

#### **20. Commencement of proceedings**

A magistrates' court may try a complaint in respect of an offence committed under these Regulations if the complaint is made within twelve months from the time when the offence is committed.

### **Forfeiture of apparatus: England and Wales and Northern Ireland**

**21.—(1)** An enforcement authority in England and Wales or Northern Ireland may apply under this paragraph for an order for the forfeiture of any apparatus on the grounds that there has been a contravention in relation thereto of regulation 5.

(2) An application under this paragraph may be made—

- (a) where proceedings have been brought in a magistrates' court in respect of an offence in relation to some or all of the apparatus under regulation 19 to that court; and
- (b) where no application for the forfeiture of the apparatus has been made under sub-paragraph (a), by way of complaint to a magistrates' court.

(3) On an application under this paragraph the court shall make an order for the forfeiture of the apparatus if it is satisfied that there has been a contravention in relation thereto of regulation 5.

(4) For the avoidance of doubt it is hereby declared that a court may infer for the purposes of this paragraph that there has been a contravention in relation to any apparatus of regulation 5 if it is satisfied that that regulation has been contravened in relation to any apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(5) Any person aggrieved by an order made under this paragraph by a magistrates' court, or by a decision of such court not to make such an order, may appeal against that order or decision—

- (a) in England and Wales, to the Crown Court
- (b) in Northern Ireland, to the county court,

and an order so made may contain such provision as appears to the court to be appropriate for delaying the coming into force of an order pending the making and determination of any appeal (including any application under paragraph 111 of the Magistrates' Courts Act 1980, or article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (statement of case)).

(6) Subject to sub-paragraph (7), where any apparatus is forfeited under this paragraph it shall be destroyed in accordance with such directions as the court may give.

(7) On making an order under this paragraph a magistrates' court may, if it considers it appropriate to do so, direct that the apparatus to which the order relates shall (instead of being destroyed) be released, to such person as the court may specify, on condition that that person—

- (a) does not supply the apparatus to any person otherwise than—
  - (i) to a person who carries on a business of buying apparatus of the same description as the first mentioned product and repairing or reconditioning it; or
  - (ii) as scrap (that is to say, for the value of materials included in the apparatus rather than for the value of the apparatus itself); and
- (b) complies with any order to pay costs or expenses which has been made against that person in the proceedings for the order for forfeiture.

#### **Forfeiture of apparatus: Scotland**

**22.**—(1) In Scotland a sheriff may make an order for forfeiture of any apparatus for private use or consumption in relation to which there has been a contravention of any provision of regulation 5—

- (a) on an application by the procurator-fiscal made in the manner specified in section 134 of the Criminal Procedure (Scotland) Act 1995(a), or
- (b) where a person is convicted of any offence in respect of any such contravention, in addition to any other penalty which the sheriff may impose.

(2) The procurator-fiscal making an application under sub-paragraph (1)(a) shall serve on any person appearing to him to be the owner of, or otherwise to have an interest in, the apparatus to which the application relates a copy of the application, together with a notice giving him the opportunity to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(3) Service under sub-paragraph (2) shall be carried out, and such service may be proved, in the manner specified for citation of an accused in summary proceedings under the Criminal Procedure (Scotland) Act 1995.

(4) Any person upon whom a notice is served under sub-paragraph (2) and any other person claiming to be the owner of, or otherwise to have an interest in, the apparatus to which an application under this paragraph relates shall be entitled to appear at the hearing of the application to show cause why the apparatus should not be forfeited.

(5) The sheriff shall not make an order following an application under sub-paragraph (1)(a)—

- (a) if any person on whom notice is served under sub-paragraph (2) does not appear, unless service of the notice on that person is proved; or
- (b) if no notice under sub-paragraph (2) has been served, unless the court is satisfied that in the circumstances it was reasonable not to serve notice on any person.

(6) The sheriff shall make an order under this paragraph only if he is satisfied that there has been a contravention in relation to the apparatus of regulation 5.

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(a) 1995 c.46.

(7) For the avoidance of doubt it is declared that the sheriff may infer for the purposes of this paragraph that there has been a contravention in relation to any apparatus of regulation 5 if he is satisfied that that regulation has been contravened in relation to an item of apparatus which is representative of that apparatus (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

(8) Where an order for the forfeiture of any apparatus is made following an application by the procurator-fiscal under sub-paragraph (1)(a), any person who appeared, or was entitled to appear, to show cause why it should not be forfeited may, within twenty-one days of the making of the order, appeal to the High Court by Bill of Suspension on the ground of an alleged miscarriage of justice; and section 182(5)(a) to (e) of the Criminal Procedure (Scotland) Act 1995 shall apply to an appeal under this sub-paragraph as it applies to a stated case under Part X of that Act.

(9) An order following an application under sub-paragraph (1)(a) shall not take effect—

- (a) until the end of the period of twenty-one days beginning with the day after the day on which the order was made; or
- (b) if an appeal is made under sub-paragraph (8) within that period, until the appeal is determined or abandoned.

(10) An order under sub-paragraph (1)(b) shall not take effect—

- (a) until the end of the period within which an appeal against the order could be brought under the Criminal Procedure (Scotland) Act 1995; or
- (b) if an appeal is made within that period, until the appeal is determined or abandoned.

(11) Subject to sub-paragraph (12), apparatus forfeited under this paragraph shall be destroyed in accordance with such directions as the sheriff may give.

(12) If he thinks fit, the sheriff may direct the apparatus to be released to such person as he may specify, on condition that that person does not supply it to any person otherwise than—

- (a) to a person who carries on a business of buying apparatus of the same description as the first-mentioned apparatus and repairing or re-conditioning it; or
- (b) as scrap (that is to say, for the value of material included in the apparatus rather than for the value of the apparatus).”.

3rd December 2003

*Stephen Timms,*  
Minister of State for Energy,  
E-Commerce and Postal Services  
Department of Trade and Industry

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 as amended (“the Principal Regulations”) which implemented Directive 1999/5/EC of the European Parliament and of the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (O.J. L91, 7.4.1999, p10).

Under the Principal Regulations certain functions relating to enforcement are carried out by the Secretary of State at the Radiocommunications Agency and the Director General of Telecommunications. Following the creation of OFCOM and the expiry of the transitional period provided for under section 401 of the Communications Act 2003 those functions are to be carried out by OFCOM and Regulation 2 amends the Principal Regulations to give effect to this change. Enforcement by weights and measures authorities in Great Britain and district councils in Northern Ireland remains as provided for in the Principal Regulations.

In amending the Principal Regulations, the opportunity has been taken, in the interests of transparency and clarity, to set out the enforcement provisions in full in Schedule 9 rather than by reference, as was the case under the Principal Regulations. Thus Part II of the Schedule sets out specific powers of the enforcement authorities. The provisions provide powers to issue suspension notices, make test purchases, powers of search, powers to require production of information, for customs officers to detain apparatus, and for forfeiture of apparatus. There are also included provisions for compensation, appeals against suspension and detention of apparatus, disclosure of information, offences of contravening suspension orders, obstruction of an authorised officer and savings for certain privileges.

Regulation 2(5)(b) applies additionally section 98(1)–(3) of the Communications Act 2003 to the enforcement of regulations 7 and 13 of the Principal Regulations to provide for a shorter time limit to be set in urgent cases where compliance is required in respect of a notification under section 94 of that Act.

Regulation 2(6) inserts a new regulation 18A providing a duty for an enforcement authority to inform the Secretary of State of any action taken by it to prohibit or restrict the supply or taking into service of relevant apparatus to enable her to pass this information to the Commission in accordance with the requirements in Directive 1999/5/EC.

A full Regulatory Impact Assessment has not been produced for this instrument as it has no impact on the costs of business.

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